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07/20/2010 06:07 PM

To Bernstein.chambers@nysb.uscourts.gov  
cc  
bcc  
Subject SpongeTech Delivery Syatems, Inc

Dear Judge Bernstein,

Attached please find correspondence relating to shareholder interest in SpongeTech Delivery Systems, Inc. for your review.

We appreciate your kind consideration of its contents.

Sincerely,



Douglas G. Furth SPNGbkLetter7-20-2010.doc

**Douglas G. Furth**

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July 20, 2010

The Honorable Stuart M. Bernstein  
United States Bankruptcy Judge  
Southern District of New York  
One Bowling Green  
New York, New York 10004-1408

Re: SpongeTech Delivery Systems, Inc.  
Case Number: 10-13647 (SMB)

Dear Judge Bernstein;

I am writing in support of prior communication on behalf of various shareholders in SpongeTech Delivery Systems, Inc. (SPNG) and in amplification of various concerns that have been heretofore expressed. I am a shareholder myself and am a member of a loosely confederated group of long shareholders who have also requested that I express concerns as to the current state of the ongoing affairs of the company and surrounding agencies that appear to be taking an interest in the current status of corporate existence.

The small group of shareholders that I am writing about represent an additional 100 million plus shares of the corporate capitalization and includes lawyers, experts in the financial markets, a senior executive in a consumer products company that provides goods and services to similar customers as does SPNG and a Fund Manager, in addition to others, including those who have previously filed on Form 13-G. Members of this group have contributed to the DIP financing for the company and most have conducted extensive due diligence with regard to corporate affairs. Many have been shareholders for multiple years and we maintain an ongoing relationship with management.

If the recent letter under the primary signature of Mr. Whitley represents a body of shareholder support, we represent the backbone of such support. We do know many of the shareholders who are signatories to that letter well and our interests remain closely aligned with theirs as shareholders of the company. We are all resolute in our determination to see that the company maintains its existence and that shareholders are treated with respect and fairness as the various processes mature.

Public companies by definition exist for the benefit of their shareholders, and in their infancy many such companies tend to rely upon their shareholders heavily for many things such as growth capital, advice and for ideas that can help to grow their business. SPNG has proven to be an anomaly to this model in several areas, some accruing to the overall benefit of shareholders and some not. Clearly the company has an innovative product line that has by all appearances become accepted by consumers across a broad spectrum of outlets. It would *appear* that in the areas of sales and marketing the company has demonstrated an acumen for product placement.

Just as clearly however, the company has also demonstrated a persistent lack of transparency to its shareholders as well as a reliable means to communicate effectively with them about corporate affairs such as capitalization, the timely publication of its financial statements and the ongoing siege by its detractors. There have also been many unexplained events throughout its corporate history that have either been hidden or lacked a verifiable and credible explanation. A myriad of rumors have been bandied about and this has caused significant periods of volatility in the equity market for the company's stock. Most importantly however, are the inexplicable fluctuations in corporate capitalization that have occurred alongside these rumors and dark periods, and the anxiety that this has wrought upon the company's shareholder base. Many shareholders have lost money as a result of the combination of ambiguity and machination that has been a hallmark of this stock for the recent past.

Questions of stock manipulation and rampant shorting have arisen as a result of this extended volatility and the company has often made its own allegations as to what it believes are the sources of such illegal tampering. Many of its allegations appear to have enough merit to warrant thorough investigation and some may have emanated as a direct result of management's own manipulations. As shareholders we still do not know the extent and origin of the problems, but it is very clear that whatever and whomever the cause, these issues continue to plague the company's shareholders to this day.

## **Regulatory Action**

In recent months, the SEC and the DOJ have entered the fray and have come forth with an entire series of allegations concerning the gross misconduct of SPNG's senior management team, alleging that the company is a total fraud. This has led to the arrest of Messer's Moskowitz and Metter and to an ongoing stream of allegation and innuendo on the part of the SEC, the trial attorney Mr. Tao and the sitting U.S. Trustee, Ms. Davis.

We as shareholders continue to read the numerous filings that are constantly bombarding the various courts emanating from these sources, all of which contain repetitious allegations about a nonexistent company and a malfeasant

management team. Often the documents appear to be cut and paste offerings of the same material, without any attendant substance other than the assertion that since it is originating from a governmental agency it must therefore be accurate. For months now the same assertions have been made in a haphazard manner without any furtherance in terms of accompanying proof, ostensibly operating under the presumption that if they are repeated often enough, they may carry the day.

Further, if one takes the time to delve deeply into the hundreds of pages of allegation, it is easy to locate multiple misstatements of fact and many instances where the SEC engages in self-contradiction with regard to its own allegations, fluctuating back and forth about whether it asserts that the company is a "total scam" or whether it has just been poorly managed and therefore only a "partial scam." For instance, after its own site inspection the SEC was compelled to admit that Dicon was a real company and that it did manufacture product, something that had been heretofore absent in its prior filings with regard to the overall legitimacy of the company. Further discrepancies in their stream of allegations occur in many other areas, upon a detailed examination of the prevailing documents.

And yet there appears to be no visible activity with regard to distilling the myriad of allegations down to any factual basis from which to launch either a furtherance of criminal prosecution or a legitimate cause of action directly against the ongoing entity of SPNG. By all accounts it merely appears to the shareholders that the SEC instead harbors an uncommon vigor to try and shut down the company and engage in a total liquidation, first through multiple petitions in Federal Court and subsequently through the U.S. Trustee who had requested conversion from a Chapter 11 to Chapter 7 liquidation. There exists a glaring lack of bifurcation between the SEC's and U.S. Trustee's allegations against the company's management and the company itself which, regardless of the underlying merit of the accusations against the management team, appears to exist as a real and ongoing entity by and of itself and should therefore be considered in a distinct light, a clear fact that has always appeared to be lost upon those who are attempting to dismantle it, thereby leading to legitimate suspicion as to their underlying motivations.

This pattern raises the inevitable question as to motivation from the shareholder base, as we wonder what possible good could accrue to us from such an approach. How could a liquidation of the company help the shareholders, when it is obvious that at least some business is being conducted, a fact that even the SEC now acknowledges but seems to hold in low regard. Candidly, the shareholders now question whether the company is able to receive a fair shake from either the SEC or the sitting U.S. Trustee, tending instead to speculate as to who the SEC is really trying to protect in this matter, the shareholders, themselves or perhaps even some institutional short sellers? The overly zealous approach to corporate disintegration on the part of these agencies certain begs

the question as to where the real interest lies and whether justice is currently being served, at least from a shareholder perspective.

### **Depository Trust Corporation**

Adding additional anxiety and frustration to the shareholder base are the actions of the Depository Trust Corporation (DTCC) and their announcement of a “global lockdown” on the trading of the company’s stock.

This global lockdown has had the material effect of halting the legitimate trading in the company’s stock, to the point where virtually ALL shareholders are left without the ability to freely trade their holdings in the company, either for the purposes of buying it or liquidating it. Effectively this privately controlled entity, that basically serves the brokerage industry and their minions, has made an arbitrary decision that affects ALL of the company’s shareholders. This adds substantive fuel to the fire as the shareholders seek to locate answers to the question of who is really behind the mystery and intrigue that continues to plague the stock. In situations such as this it is only natural to question who might benefit if the company is put out of business or is otherwise prohibited to trade in a free and open manner. Is it the shareholders or could it be others who have a vested interest in seeing the stock and the company evaporate?

**More importantly and from a macro viewpoint, how can it possibly be in the best interests of the shareholders to be frozen and otherwise prohibited from buying or selling their stock and why does there appear to be a concerted and fully coordinated effort to prevent this from happening?**

These are real questions and concerns that the shareholders carry with them on a daily basis. They are not borne out of fear or any wild thought of conspiracy, but are instead forged from a thorough reading of available material.

### **U.S. Trustee**

Recently we have seen filings and actions taken by the sitting U.S. Trustee, Ms. Tracy Hope Davis. I am not writing to cast any aspersions upon her or to in any way question her integrity. However, it would appear that she is merely continuing to do the bidding of the SEC in this matter and is neither fully apprised of the fact base or is acting in an otherwise hasty manner at the request of the SEC.

Her recently filed request in opposition to the Chapter 11 filing from the company clearly contains more of the repetitious and unproven rhetoric that has been a part-and-parcel of the SEC underpinning from day one. She appears to forward similar assertions to those that have been heretofore loudly broadcast by the

SEC and in particular Mr. Jeffrey Tao, basically stating that since allegations have been made but not proven, the court should still take positive action to disintegrate the company and its shareholder base. This clearly runs contrary to any notion of justice that dictates that any allegations or accusations must be proven prior to being adjudicated guilty. It would appear however that neither the SEC nor Ms. Davis believes this is a necessary prerequisite to the total dismantling of a company. Relying merely upon innuendo and allegation it continues to be the stock-and-trade of the government to assert that since they allege it, it must therefore be correct.

### **Today's Appointment of Mr. Gregory Hayes**

Today's appointment of Mr. Hayes as a Trustee is further evidence to the shareholder base that there is a tangible lack of impartiality to the actions of the U.S. Trustee and the SEC. **We respectfully ask the court to overturn the appointment of Mr. Hayes as the trustee as he is the clear and predetermined choice of the SEC, who has had him lying-in-wait for several weeks.** Given the prior pattern and actions of the SEC and the U.S. Trustee how can such a choice be considered as impartial by the shareholder base? If anything it gives rise to the argument that there are hints of impropriety within the alliance that clearly exists between the SEC, the U.S Trustee and Mr. Hayes. The appearance of what is happening is clearly not one that promotes confidence amongst the shareholder base and any objective observer.

Again we are not casting any aspersions on Mr. Hayes and neither is this any indictment as to his abilities. However, in the interests of impartiality and fairness this is a clear slap in the face to both the company and in particular its shareholder base, as Mr. Hayes was originally being touted as a candidate to be a receiver for the company by the SEC, with the specific charge of liquidating the corporate assets, as is his past history when working with the SEC. How can it now be sold as being an impartial choice to the shareholders?

We strongly believe that this represents a very poor choice for a Trustee who will be charged with the task of looking after the best interests of the shareholders, as the SEC has clearly and unmitigatedly backed him as their choice.

**In the interests of impartiality it would seem as if it would be a far better choice to select someone who has not had a prior connection to ANY party to this proceeding, as opposed to one who has had the clear backing of the Agency that is so clearly and forcefully seeking to dismantle the company at all costs. We just do not see any way that this can be considered as an impartial choice under these circumstances and from our perspective it renders the entire bankruptcy process moot.**

## **The Company**

It would not be fair to end this letter without stating clearly that we as shareholders also believe that the company has been somewhat negligent in keeping shareholder interests at the forefront of their thinking. Undoubtedly management has exercised poor judgment throughout their tenure when it comes to being openly transparent with its shareholders and in acting in a fiducially responsible manner, at least in some respects. That said, it remains to be *proven* that they have done anything that would constitute a criminal act, or that they bear singular responsibility for all that has transpired contrary to shareholder interest.

One thing remains certain as far as the shareholders are concerned, that being the release of the company's financial statements has been inexcusably delayed. We as shareholders have not seen publicly disseminated financial statements for almost eighteen months now and that is TOTALLY without excuse as far as we are concerned. We have been provided with many, many excuses throughout the dark period, including delays by the SEC, the accountants, the lawyers and company, but regardless the single most disturbing and frustrating thing about this investment has been the lack of publicly disseminated financial statements.

We have been lead to believe that virtually everyone has seen such statements "behind the scenes" and that they do indeed exist, and have also been told that the SEC has seen them as well. It would seem as if the only ones to still be left in the dark so to speak, are the shareholders who are the ones who should be most entitled to see them. We view it as being imperative that the court seek to provide total transparency to the shareholders so that all parties can be on a level playing field with regard to the most important piece to the corporate mystery.

We also view it as being of the utmost importance as far as the re-establishment of ongoing credibility is concerned, that the shareholders have a substantive voice in the future operations of the company. A revised Board of Directors and perhaps an incumbent shareholder committee is suggested in order to provide adequate assurance to the shareholder base that our interests are being responsibly upheld.

## **Corporate Legal Representation**

We as shareholders wish to further assert that our interests may have been injured due to the prevailing and lingering potential conflict of interest with regard to the corporate legal representation. If our information is correct the firm of Greenberg & Traurig appears to be simultaneously engaging in the representation of both the company as well as one of its officers.

In the event that this is accurate information we do not see how this can possibly be allowed to occur given the inherent diversity of interest that clearly exists between the individual interests of Mr. Metter and the company itself. Operating under this presumption of dual representation we as shareholders have once again had our primary interests subjugated as a result of this conflict and we would request that immediate action be taken to remedy this situation.

## **Conclusion**

The shareholders of SPNG are clearly frustrated. Most have lost a great percentage of their investment and we remain mired in a muddy legal battle that has yet to provide any manner of clarity for us. For months now we have seen a decay in the value of our investment and are now without the means to even prevent further loss as a result of the arbitrary decision on the part of the DTCC to prevent the free market trading of the company's stock that belongs to us as shareholders. In effect we are locked in as bystanders as this continuing drama plays itself out.

**The overarching theme to this letter is that we as shareholders have continually been given short shrift. We seem to exist as an afterthought as the battle plays out above our heads. We are in fact the owners of the company yet as such our interests continue to be perverted at the pleasure of others, inclusive of the SEC, the U.S. Trustee and the company. We find that while the SEC continues to try and dismantle the company and the company itself continues to play coy about the dissemination of material fact to the public and perhaps even to the various Regulatory Agencies involved in this, we as shareholders seem to be cast aside as misfits and bit players. We know that while the market for the stock remains under lockdown at the whim of a quasi-private company and the stock continues to be blindly manipulated against our interests, it is we who suffer the primary damage here, while others are quite possibly profiting (illegally) from this entire exercise.**

EVERYONE seems to be forgetting the shareholders here and our interests are clearly now pejorative to those of the primary combatants. We seek justice, we seek transparency and we seek a voice in the outcome of our investment. Whereas we are happy that the company has sought the protection of the bankruptcy court in this matter so as to bring some definition to the timeline and the infection of insanity that has been so pervasive for many months now, we remain unconvinced to date that our interests have been elevated to the proper level and are being treated with due respect.

We are willing to assist in the process of restoring corporate transparency and redemption and seek only to gain justice and equity for our position as the true owners of the company. We seek the restoration of an orderly and free trading



market for the company's stock and we seek justice for any and all who may have acted against the overall best interests of the shareholder base. We respectfully urge you to help restore order, justice and equity to the process and are hopeful that we as shareholders will eventually be once again proud to be owners of this company.

Sincerely,

Douglas G. Furth